

Assembly Bill No. 2686

CHAPTER 395

An act to amend Section 46017 of the Food and Agricultural Code, relating to organic products.

[Approved by Governor September 27, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2686, Tom Berryhill. Organic products: county agricultural commissioners: civil penalties.

Existing law authorizes the Secretary of Food and Agriculture or a county agricultural commissioner to levy a civil penalty, as provided, against a person who violates the California Organic Products Act of 2003, or any regulation adopted pursuant to that act, or regulations adopted by the National Organic Program. Existing law provides that a civil penalty levied by a county agricultural commissioner may be recovered in a civil action brought in the name of the county.

This bill would authorize a county agricultural commissioner, or his or her representative, after the exhaustion of review procedures, to file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any order that denies a petition for a writ of administrative mandamus with the clerk of the superior court of any county, and require the clerk to immediately enter judgment in conformity with the decision or order. The bill would provide that no fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment.

The people of the State of California do enact as follows:

SECTION 1. Section 46017 of the Food and Agricultural Code is amended to read:

46017. (a) In lieu of prosecution, the secretary or a county agricultural commissioner may levy a civil penalty against any person under the enforcement jurisdiction of the secretary as provided in Section 46000 who violates this act, or any regulation adopted pursuant thereto or pursuant to this chapter, or regulations adopted by the NOP, in an amount not more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the secretary or county agricultural commissioner finds that a violation was not intentional, the secretary or county agricultural commissioner may levy a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivision (a) or (b), the secretary or county agricultural commissioner may issue a notice of violation if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is proposed shall be afforded an opportunity for a hearing before the secretary or county agricultural commissioner, upon request made in writing within 30 days after the issuance of the notice of penalty. At the hearing, the person shall be given the right to review the secretary's or commissioner's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the final decision of the secretary or county agricultural commissioner may be requested in writing by any person, pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of the final order of the secretary or county agricultural commissioner.

(f) A civil penalty levied by the secretary pursuant to this section may be recovered in a civil action brought in the name of the state. A civil penalty levied by a county agricultural commissioner pursuant to this section may be recovered in a civil action brought in the name of the county. After the exhaustion of the review procedures provided in this section, a county agricultural commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any order that denies a petition for a writ of administrative mandamus with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. Pursuant to Section 6103 of the Government Code, no fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(g) The secretary shall maintain in a central location, and make publicly available for inspection and copying upon request, a list of all civil penalties levied by the secretary and by each county agricultural commissioner within the past five years, including the amount of each penalty, the person against whom the penalty was levied, and the nature of the violation. Copies of this list shall also be available by mail, upon written request and payment of a reasonable fee, as set by the secretary.